IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.62 OF 2005

Stup Consultants Pvt.Ltd. ... Petitioners

v/s

Hyder Consulting Ltd. ... Respondents

Mr S. Shah i/b Mr Hemant Sethi for Petitioners.

None for Respondents.

CORAM : D.K.DESHMUKH J.

DATE : 14TH MARCH 2005

P.C.: -

1. This is a petition filed under section 9 of the Arbitration and Conciliation Act 1996 for interim measures. The arbitration clause between the parties contemplates appointment of three Arbitrators, one to be appointed by each party and the two Arbitrators appointing the third Arbitrator. The dispute arose between the parties in the month of March 2004. Therefore, a letter dated 29th March 2004 was addressed by the petitioners to the respondents. Though the arbitration clause, as observed above, provided for Arbitral Tribunal of three Arbitrators by the said letter proposal was submitted for appointment of Sole Arbitrator. Therefore, this letter has to be ignored as it is not in accordance with the arbitration clause. Then on 12th May 2004, a letter was written informing the name of the nominee of the petitioners on the Arbitral Tribunal and asking the respondents to nominate their Arbitrator. Within 30 days of receipt of the said letter, there was no response. Therefore, in terms of section 11 of the Arbitration and Conciliation Act 1996, the petitioners could have approached the authority nominated under the said section for constitution of the Arbitral Tribunal. The petitioners did nothing. On 1st

September 2004 again a letter was written. The respondents were asked to nominate their Arbitrator on the Tribunal. It was also stated that the petitioners understand that the respondents are winding up their operations in India. Again there was no response from the respondents, but the petitioners did nothing for getting the Arbitral Tribunal constituted. In the petition, the learned counsel for petitioners fairly stated that there is no explanation to be found as to why the petitioners did not take steps to get the Arbitral Tribunal constituted since June 2004. As the material available on record does not show that the petitioners are willing to go to arbitration, the petitioners would not be entitled to any interim measure under section 9 of the Act. Petition is disposed off.

. Parties to act on the copy of this order duly authenticated by the Associate / Personal Secretary as true copy.

. Certified copy expedited.